

February 26, 2004

Assemblymember Christine Kehoe
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0076

Dear Assemblymember Kehoe:

Request for Attorney General Opinion - SB 420 (Medical Cannabis)

This letter is written on behalf of the City of San Diego's Proposition 215/Medical Cannabis Task Force. We are asking for your assistance with obtaining an opinion from the State Attorney General's Office regarding the effect of Senate Bill 420 on the ability of local agencies to operate medical cannabis verification card programs. According to California Government Code section 12519, the City's Proposition 215 Task Force is not authorized to request an Attorney General Opinion, and the San Diego City Attorney's Office is not authorized to seek an Attorney General opinion on an issue of civil law. However, as a member of the legislature, you are authorized to request such an opinion. Therefore, we would appreciate if you would consider requesting an opinion regarding this matter on our behalf. Currently, there are no pending requests for opinions regarding SB 420 and its effect on local medical marijuana programs, which is a subject of critical importance to all local agencies in the state with medical marijuana programs.

Background. In February 2001, the City Council of the City of San Diego passed an ordinance enacting a medical cannabis voluntary verification card program (San Diego Municipal Code sections 42.1301- 42.1313, attached as Exhibit 1 to this letter) consistent with Proposition 215, which was passed in 1996. In May 2001, the City Council formed a Proposition 215 Implementation Task Force to determine the most efficient way to regulate the use of medicinal marijuana in accordance with Proposition 215. Since the enactment of an ordinance and the creation of the Task Force, the Task Force has been working to develop specific law enforcement guidelines, which have been approved by the Council and incorporated into the ordinance, and to develop a verification card program to be administered by an external contracting agency. The City's ability to identify a willing card program operator has been hindered by lack of funding, and an initial Request for Proposals that was issued for a program contractor was unsuccessful. However, the Task Force was preparing to issue a second Request for Proposals for a program contractor at the time of passage of SB 420 on October 12, 2003.

Summary of SB 420. SB 420 adds an article to the California Health and Safety Code, beginning with section 11362.7, directing the State Department of Health Services (DHS) to establish a statewide voluntary verification card program for qualified medical cannabis patients. SB 420 requires DHS to develop protocols and forms for the program, and to establish application fees. Under SB 420, county health departments are

responsible for processing applications and issuing identification cards, however, counties can delegate their responsibilities to other “health related” governmental or nongovernmental entities. The possession limit set forth by SB 420 is 8 ounces of dried marijuana per patient, and 6 mature or 12 immature plants per patient. Section 11362.83 of SB 420 provides, “Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.”

Differences Between SB 420 and City Ordinance. There are several significant differences between SB 420 and the City Ordinance, including, but not limited to:

- Who can be an attending physician – SB 420 allows a recommendation to be made by any physician licensed in the state, but the City Ordinance requires the physician to practice in San Diego County
- Who can be a caregiver – the City Ordinance prohibits anyone under 18 from being a caregiver, however SB 420 allows a minor to be a caregiver if the minor is a parent of a patient or authorized by law to make medical decisions for the patient
- Scope of the “safe harbor” protection offered by the card – SB 420 provides that possession of the card protects persons from being subject to arrest, but the City Ordinance also protects cardholders from detention for longer than necessary and seizure of marijuana (but limits the operation of the safe harbor to contacts by San Diego Police Department within the City limits)
- Possession amounts – the City Ordinance allows for possession amounts greater than those set forth in SB 420
- Public smoking – SB 420 prohibits smoking of cannabis in any public place where smoking is prohibited by law, and in other specific locations such as within 1,000 feet of a school or in a motor vehicle that is being operated, however, the City ordinance contains a broader prohibition on smoking cannabis in any public place or any place open to the public
- Type of cards to be issued – SB 420 defines an identification card as a document issued by the State DHS, however, the City Ordinance allows the City contracting agency to issue a local identification card for use only by San Diego Police Department in the City’s jurisdiction

In light of the foregoing, we would like to request an Attorney General opinion on the following questions:

1. Is the City of San Diego's Medical Cannabis Voluntary Verification Card Program Ordinance (San Diego Municipal Code sections 42.1301-42.1313) (City ordinance) preempted in whole or in part by SB 420?
2. Can the City of San Diego operate a local medical cannabis verification card program (involving the issuance of City identification cards) under its current City Ordinance?
3. Can the City of San Diego operate a local medical cannabis verification card program (involving the issuance of City identification cards) if it modifies its City Ordinance to conform to the provisions of SB 420?
4. If the City is preempted from operating a local medical cannabis verification card program by SB 420, can the City operate a local verification card program on an interim basis pending the establishment of the statewide card program?
5. What types of entities are "health related governmental or nongovernmental" entities or organizations eligible to be designated by the County of San Diego to perform the functions of the County pursuant to Health and Safety Code section 11362.71(c)? Does the City of San Diego qualify to be a potential designee of the County pursuant to section 11362.71(c)?
6. In November 2003, Governor Arnold Schwarzenegger issued an order halting the implementation of all pending state regulations. What, if any, effect does this order have on the implementation of the statewide medical cannabis card program pursuant to SB 420?

In order to obtain an Attorney General opinion on these questions, the questions must be submitted to the Attorney General's Opinion Unit, P.O. Box 94425, Sacramento, CA, 94244-2550. The opinion must be signed by you as the public official authorized to make the request. Thank you very much for your consideration of this request. The resolution of these legal issues is important not only to the City of San Diego but to cities and counties statewide. If you have any questions regarding this request, please feel free to call Task Force Chair Jerry Meier at (619) 692-0929.

Sincerely,

Jerry Meier, MPH
Chair
Medical Marijuana Task Force

Dale Kelly Bankhead
Co-Chair
Law Enforcement/Legislative Subcommittee